

service than BellSouth's retail customers.¹⁶ The incidents to which the CLECs refer are not indicia of discriminatory service, but rather isolated instances in which miscommunication or honest mistakes by both BellSouth and CLEC personnel resulted in late cut-overs or short-lived malfunctions. See Milner Reply Aff. ¶¶ 19-22, 27-29. BellSouth has responded to specific allegations in Mr. Milner's reply affidavit. See generally, Milner Reply Aff. Many occurred when BellSouth was still developing its loop cut-over processes, and merely indicate former problems with BellSouth's procedures that have since been corrected. Milner Aff. ¶¶ 68-76.

That CLECs have to resort to outdated anecdotes suggests precisely what BellSouth's performance measurements confirm. BellSouth provides reliable, nondiscriminatory access to loops. For instance, while Sprint suggests that it has experienced "ongoing" problems with loops, Sprint's Closz Aff. ¶ 52, the facts are that between January 2, 1998 and August 14, 1998, only 1.3 percent of the total unbundled loops provided to Sprint had problems resulting in missed due dates, and during this same period BellSouth met 91 percent of its due dates (excluding missed due dates caused by Sprint or the end user not being ready). Milner Reply Aff. ¶ 19. Moreover, between January and July 1998, 97.5 percent of unbundled loop cut-overs for Sprint were completed within the promised interval. Id.

e.spire suggests that, if problems do arise, BellSouth's technicians and UNE Provisioning Center are unavailable to address loop cut-over problems after 6:00 PM. e.spire at 25. In fact, BellSouth technicians and the UNE provisioning center are available for CLECs who make after-hours appointments and are prepared to pay overtime charges. Funderburg Reply Aff. at 13.

¹⁶ Letter from William E. Kennard, Chairman, FCC, to The Honorable John McCain and The Honorable Sam Brownback, U.S. Senate, at 2 (Mar. 20, 1998); Michigan Order, 12 FCC Rcd at 20754, Separate Statement of Reed Hundt at 2.

A study conducted by BellSouth revealed that the average time it takes to disconnect a loop from BellSouth's switch and to connect the loop to a CLEC's switch is approximately four minutes, and an additional 39 seconds to respond to a request to begin porting calls to the CLEC's switch. Milner Reply Aff. ¶ 35. This study proves that BellSouth has established that it can effectively and quickly perform loop cutovers.

E. Checklist Item 5: Unbundled Local Transport

BellSouth makes available to CLECs dedicated and shared transport, using the same shared transport facilities that BellSouth uses to carry its own traffic, without distinguishing between CLECs' traffic and its own traffic. See BellSouth Br. at 44-45; Varner Aff. ¶¶ 113-116. End-to-end testing of these offerings has verified that service orders for transport and unbundled channelization flow through BellSouth's systems as planned, and are accurately billed. Milner Aff. ¶ 79. CLECs may order interoffice transport using the manual process discussed in the Affidavit of Jan Funderburg. Funderburg Aff. ¶¶ 81-89. Electronic interfaces and processes are available for maintenance and billing of interoffice transport. See Stacy OSS Aff. ¶ 175 (maintenance and repair); Stacy OSS Reply Aff. ¶ 70 (same); Scollard Aff. ¶¶ 5, 22 (billing).

No commenter has disputed the fact BellSouth provides nondiscriminatory access to unbundled local transport to CLECs in Louisiana. The Commission accordingly should find expressly that BellSouth satisfies this checklist requirement.

F. Checklist Item 6: Unbundled Local Switching

AT&T contends that BellSouth has not provisioned a sufficient number of switch ports in Louisiana or its nine-state region to satisfy checklist item (vi). AT&T's Hamman Aff. ¶¶ 54-56. As reported in the Application, BellSouth had successfully provisioned and is billing CLECs for two unbundled switch ports in Louisiana and 80 unbundled ports in all as of June 1, 1998.

Varner Aff. ¶¶ 121-134 & Ex. AJV-6 (usage recordings, record exchange, and billing for unbundled switching); Milner Aff. ¶¶ 80-89. Unbundled switching can be ordered via EDI, Stacy OSS Aff. ¶¶ 86, 103 & Ex. WNS-30, while maintenance and repair can be obtained through TAFI and ECTA, id. ¶¶ 164, 175; Stacy OSS Reply Aff. ¶ 70. See also Scollard Aff. ¶¶ 5, 10, 20, 22 (billing for unbundled ports); Scollard Reply Aff. ¶ 2 (same); Stacy OSS Aff. ¶ 183 (same). AT&T does not suggest what number of ports BellSouth should have provided to satisfy the checklist, but merely states that these 82 ports are not enough. See Milner Reply Aff. ¶ 31. In so doing, AT&T cavalierly disregards the Commission's ruling that section 271 does not "require a petitioning BOC to be actually furnishing each checklist item," much less be furnishing an item at a particular volume. Michigan Order, 12 FCC Rcd at 20605, ¶ 115. AT&T's approach, the Commission noted, "would make BOC entry contingent on competing LECs' decisions about when to purchase checklist items and would provide competing carriers with an opportunity to delay BOC entry." Id. at 20602, ¶ 111.

AT&T also objects to BellSouth's procedures for allowing CLECs to bill for access services they provide using unbundled switching, claiming among other things that BellSouth does not provide adequate mechanized usage data for billing. AT&T at 50-51; AT&T's Hamman Aff. ¶¶ 13-21 & Attach. 7. BellSouth provides CLECs records for all interstate and intrastate toll calls originating from or terminating to unbundled switch ports, except for terminating intraLATA toll calls carried by BellSouth itself. Scollard Aff. ¶ 21; Scollard Reply Aff. ¶ 2. Since July 24, 1998, this information has been provided to AT&T as part of the Access Daily Usage File ("ADUF"); any other CLEC can obtain the ADUF as well. Scollard Reply Aff. ¶ 2.

With respect to records for terminating intraLATA toll calls, BellSouth will have implemented its mechanized capability to provide records for terminating intraLATA toll calls by October 31 of this year. Id. Until then, BellSouth will jointly develop with interested CLECs an interim procedure for calculating the charges owed to the CLECs for terminating these calls. Scollard Reply Aff. ¶ 2. To date, however, neither AT&T nor any other CLEC has expressed interest in developing such a process. Scollard Reply Aff. ¶ 2.¹⁷

AT&T also claims that BellSouth is refusing to provide CLECs with access to vertical switching features, except in precisely the same combinations BellSouth offers. AT&T at 3, 55; AT&T's Augier Aff. ¶ 27; AT&T's Hamman Aff. ¶¶ 45-49 & Attachs. 2-4. Insofar as AT&T is concerned about vertical features that are not loaded and activated in BellSouth's switches, BellSouth is not obligated to provide these features. Varner Reply Aff. ¶¶ 4-5; see Iowa Utils. Bd., 120 F.3d at 813 (Act requires that CLECs be afforded access "only to an incumbent LEC's existing network—not to a yet unbuilt superior one") (emphasis added). Nevertheless, BellSouth does provide CLECs access to features that may be programmed into BellSouth's switches, but that are not yet loaded and activated, via the bona fide request ("BFR") process. Varner Aff. ¶¶ 4-8; see generally id. ¶ 21 (discussing BFR process). With respect to specific interconnection agreements that treat existing vertical switching features as retail services, these agreements will — by their own terms — be amended to reflect the Supreme Court's ruling on the appropriate pricing approach. Id. ¶ 132 & Ex. AJV-2 (listing applicable agreement references).

¹⁷ AT&T's notion that CLECs will be unable to collect reciprocal compensation without a "binding surrogate method" for approximating intraLATA toll usage, is unfounded. AT&T at 50, 52; AT&T's Hamman Aff. ¶¶ 22-26. BellSouth's agreements with CLECs stipulate that BellSouth will provide the necessary data, e.g. AT&T Agreement Attach. 6, § 5.1, and BellSouth stands ready cooperatively to provide it.

MCI objects that BellSouth does not currently provide trunk ports as a separate unbundled element from local switching. MCI at 29-30; MCI's Henry Aff. ¶¶ 55-56. MCI has not raised this issue in arbitration, nor has it requested separately provided trunk ports via the BFR process, as would be proper. Milner Aff. ¶ 88. It is unlikely that MCI ever will request such sub-elements. Trunk ports unbundled from other switching have no function whatsoever. Id. For example, if a CLEC purchased only an "originating port" on a tandem switch, the CLEC would have no way to send traffic out of the switch unless it had also purchased switching functionality and a "terminating port." Milner Reply Aff. ¶ 30. MCI apparently has conjured up the hypothetical possibility of wanting unbundled trunk ports simply for the purpose of complaining about a lack of access to them. Id.

AT&T complains that neither of BellSouth's two, alternative methods of customized routing are sufficient. AT&T at 50, 53; AT&T's Hamman Aff. ¶¶ 27-43; see also Varner Aff. ¶ 133 (describing methods); Milner Aff. ¶¶ 82-84 (same). AT&T claims that the line class code method of customized routing is discriminatory and burdensome because BellSouth requires AT&T to identify the switch-specific line class codes for each customer for which it is ordering routing, whereas BellSouth has automated this function for its own representatives. AT&T's Hamman Aff. ¶¶ 31-36. BellSouth requires this information in order to properly route AT&T customers' calls; providing this information is simply a part of ordering the service. Milner Reply Aff. ¶ 33.

With respect to the AIN-based method of customized routing, AT&T states that BellSouth has refused to commit to an implementation schedule. AT&T's Hamman Aff. ¶¶ 38-40. This is incorrect. AIN will be deployed in Louisiana starting by September 30, 1998. Milner Reply Aff. ¶ 32. AT&T also complains about the post-dial delay associated with AIN-

based customized routing. AT&T's Hamman Aff. ¶¶ 41. This delay is negligible, amounting to as little as half a second and no more than one second. Milner Reply Aff. ¶ 32. But if AT&T truly believes that this delay is unacceptable for certain customers (even though delay is inherent in any database query procedure, id.), AT&T is free to utilize the line class code method for those customers. Id.

AT&T also complains that BellSouth has ignored requests relating to use of a batch order process to migrate resale customers in Georgia to AT&T's own OS/DA platform, using line class codes. AT&T's Hamman Aff. ¶ 37; but see Milner Aff. ¶ 84. AT&T is referring to a manual process that AT&T rejected; instead, AT&T developed a mechanized process that allows it to migrate as many resale customers per day as it wishes. Id. Milner Reply Aff. ¶ 34.

Finally, AT&T notes that BellSouth has yet to establish pricing for customized routing. AT&T at 54; AT&T's Hamman Aff. ¶ 42. Until prices are approved by the Louisiana PSC, BellSouth imposes no charge; thereafter, CLECs will pay the cost-based rate determined by the Louisiana PSC (subject to any appeals). Varner Aff. ¶ 133. CLECs thus are guaranteed that they will pay no more than the proper cost-based charge, and until the Louisiana PSC establishes a cost-based rate for this service, CLECs are not charged for the service. Id.

MCI maintains that the signaling protocol BellSouth uses to pass interLATA and intraLATA toll operator services traffic to CLEC trunks, Modified Operator Signaling ("MOS"), is not compatible with CLECs' networks, and thus MCI cannot offer customers its own operator services. MCI at 60-62; MCI's Henry Aff. ¶¶ 51-54. BellSouth is unaware of any request by any CLEC for a different signaling protocol. Milner Reply Aff. ¶ 3. Indeed, MCI operations personnel assured BellSouth as recently as August 19, 1998 that there are no outstanding issues between MCI and BellSouth relating to operator and directory assistance services. Id. This is

another example of how the fictional conflicts presented by CLECs in this proceeding bear no relationship to the realities of local competition in Louisiana or other BellSouth states.

G. Checklist Item 7: Access to 911 and E911 Services, Operator Call Completion Services, and Directory Assistance

BellSouth offers CLECs nondiscriminatory access to 911 and E911 services in accordance with the Act throughout its nine-state region, including Louisiana. The Commission acknowledged this fact in its South Carolina Order, stating that "BellSouth has met its burden to demonstrate that it offers nondiscriminatory access to 911 and E911 services." 13 FCC Rcd at 667, ¶ 230. BellSouth offers 911 and E911 services in Louisiana as well as all other states in its region using the same Commission-approved methods and processes as in South Carolina. Varner Aff. ¶ 137. CLECs can order 911/E911 trunks using EXACT, Stacy OSS Aff. ¶¶ 96-97 & Ex. WNS-30, while EDI can be used to update end-user listings, id. ¶¶ 143-144. The manual process used to order access to the directory assistance databases is described in the Affidavit of Jan Funderburg. Funderburg Aff. ¶¶ 81-89. Electronic interfaces and processes are available for maintenance and billing of these services. See Stacy OSS Aff. ¶¶ 164, 175 (maintenance and repair); Stacy OSS Reply Aff. ¶ 70 (same); Stacy OSS Aff. ¶ 185 (billing).

In its comments in this proceeding, Cox repeats the very same arguments it made offered when BellSouth applied for interLATA relief last year, complaining that BellSouth's "process for 911 compliance "ensures that BellSouth's records are corrected automatically, while leaving some CLECs to depend on faxed inquiries when there appear to be errors," and that BellSouth does not offer CLECs a method of mechanized file transfer. Cox at 3; see also id. Ex. 1 at 9-12. As BellSouth has explained, BellSouth updates CLECs' customers' listings in the 911 database on a nondiscriminatory basis. Varner Aff. ¶ 137; Milner Aff. ¶ 92; Sapp Aff.,

generally; Marczak Aff., generally. Following the initial addition of CLEC entries in the 911 database, subsequent data are submitted by CLECs iprocessed daily by SCC Communications, Inc., with whom BellSouth has contracted to provide E911 database services. Sapp Aff. ¶ 11. Records that fail validity edits are marked with an error code and written to an error file. Sapp Reply Aff. ¶ 4. On the following morning, BST's error file is received by the SCC Analyst for investigation and correction on BST's behalf, in accordance with the BST/SCC contract. Id. In the same time frame, other data providers receive their error files by fax for investigation and correction. Id. Although BellSouth cannot correct data for other companies, CLECs and other data providers have the same option of using a vendor to provide these services on their behalf. Id.

It is worth noting that Cox has never sent local service orders and has no records in the 911 database. Sapp Reply Aff. ¶ 6. The 25 facilities-based provisions in BellSouth's region (including 5 in Louisiana), on the other hand, have not raised any complaints about BellSouth's 911 service. Id.

MCI argues that because BellSouth requires CLECs to use dedicated transport between their switches and BellSouth's OS/DA platform if they want OS and DA calls to be branded, BellSouth may run out of space for trunks on its operator switches. MCI's Henry Aff. ¶ 52; see also AT&T at 21; AT&T's Falcone Aff. ¶ 133; see Varner Aff. ¶ 143; Milner Aff. ¶¶ 82-85. As the initial Affidavit of W. Keith Milner explains, BellSouth has provided CLECs with dozens of operator services trunks in Louisiana and several hundred across its region. Milner Aff. ¶ 100. BellSouth has also provided such access to independent LECs and other carriers for years. Id. This access is considered "business as usual;" there is no concern at BellSouth that its OS facilities might not be able to accommodate the needs of all CLECs. Id.

MCI also complains that by omitting the directory listings of certain carriers, BellSouth has not been furnishing other CLECs with the entire directory assistance database. MCI at 28-29; MCI's Henry Aff. ¶¶ 48-50. As Alphonso Varner explained in his opening affidavit, confidentiality clauses in interconnection agreements with certain independent LECs and CLECs constrain BellSouth in the directory listings it may provide to all CLECs. Varner Aff. ¶ 141. BellSouth is actively engaged in negotiations with these carriers to modify their agreements to permit their listings to be provided, and there are open proceedings in several BellSouth states that may decide this issue in those states. Id. However, until it has obtained the necessary modifications to its agreements, or the courts or the Louisiana PSC release BellSouth from these obligations, BellSouth is contractually required to omit these listings in Louisiana. Id. BellSouth is not attempting to disadvantage CLECs with regard to the provision of directory listings; it is simply honoring its legally binding commitments.

AT&T complains that BellSouth does not provide CLECs with nonpublished listing indicators in the "extracts" it provides of the directory assistance database. AT&T at 63. This results, argues AT&T, in different "perceived carrier competence" that will negatively affect CLECs. Id. As BellSouth has previously explained, the process by which BellSouth's systems generate local exchange subscriber listings available in DA is identical for CLECs and BellSouth's retail services. Coutee Aff. ¶ 10. When a CLEC subscribes to BellSouth's DA database services, the CLEC is provided with all information necessary to use the service, including detailed record layout information, indicators and their meaning. Varner Reply Aff. ¶ 23. BellSouth provides indicators that allow CLECs properly to handle requests for nonpublished listings. BellSouth does not, however, provide the actual nonpublished listing. Id.

H. Checklist Item 8: White Pages Directory Listings

The only party to complain about BellSouth's provision of White Pages listings to CLECs is AT&T.

AT&T argues that BellSouth does not have processes in place to accept orders for complex directory listings. AT&T's Hassebrock Reply Aff. ¶¶ 59-60. This is incorrect. BellSouth has manual processes in place to accept these complex orders; they are documented in Sections 3.7 and 3.8 of the BellSouth Ordering Guides located on BellSouth's website. Funderburg Reply Aff. ¶ 46. Generally, Directory listings can be ordered using EDI, Stacy OSS Aff. ¶¶ 143-144, Ex. WNS-30; Stacy OSS Reply Aff. ¶ 38. See also Scollard Aff. ¶ 5 (billing for directory listings).

AT&T further contends that BellSouth is unable to process directory listing orders for AT&T's Digital Link customers. AT&T at 62; AT&T's Augier Aff. ¶ 23; AT&T's Hassebrock Aff. ¶¶ 62-65. AT&T claimed that BellSouth is unable to process directory listing orders for telephone numbers that AT&T assigns to AT&T's own (Digital Link) customers (AT&T at 62; Augier Affidavit [AT&T] ¶ 23; Hassebrock Affidavit (AT&T) ¶¶ 62-65). Directory Listing orders for telephone numbers that AT&T assigns to their own customers can be manually processed. This ordering process is described on the DLR section of the BellSouth Interconnection website (http://www.Interconnection.bellsouth.com./guides/lSor_i2C/index.htm). BellSouth requires assignment of a miscellaneous account number to facilitate this ordering process. Funderburg Reply Aff. ¶¶ 47-48.

I. Checklist Item 9: Access to Telephone Numbers

BellSouth demonstrated in its initial filing that it provides CLECs with NXX codes for their customers' use in absolutely the same manner as it maintains those numbers for its own

customers' use. BellSouth Br. at 53-54; Milner Aff. ¶¶ 106-111; Varner Aff. ¶ 164. BellSouth has never charged CLECs or independent telephone companies for NPA/NXX assignments. Milner Reply Aff. ¶ 37. No party has proffered any evidence or even argument that might lead the Commission to doubt this fact. The Commission therefore should find and expressly state that BellSouth is in complete compliance with the requirements of this checklist item.

J. Checklist Item 10: Access to Signaling and Call-Related Databases

BellSouth has demonstrated that it provides CLECs with nondiscriminatory access to all of its signaling systems and call-related databases, in a manner that complies with the requirements of section 222 of the Communications Act, and at cost-based prices established by the Louisiana PSC. See BellSouth Br. at 54-56; Milner Aff. ¶¶ 113-148; Varner Aff. ¶¶ 167-179; Pricing Order Attach. A, §§ E, K. CLECs may order access to signaling and call-related databases using EXACT. Stacy OSS Aff. ¶¶ 96-97 & Ex. WNS-30. Electronic interfaces and processes are available for maintenance and billing of these services as well. Id. ¶ 175 (maintenance and repair); Scollard Aff. ¶ 5 (billing).

No party has disputed BellSouth's showing with regard to signaling and databases. Again, therefore, the Commission should find and expressly state that BellSouth has satisfied the requirements of this checklist item.

K. Checklist Item 11: Number Portability

As demonstrated in its initial filing, BellSouth fully satisfies the number portability requirements of the competitive checklist. BellSouth Br. at 56-58; Varner Aff. ¶¶ 180-187; Milner Aff. ¶¶ 49-60; McDougal Aff., generally. Interim and local number portability can be ordered using EDI, Stacy OSS Aff. ¶¶ 86, 90-91, 103, Exhibit WNS-30; Stacy OSS Reply Aff. ¶ 38. Electronic interfaces and processes are available for maintenance and billing of interim

number portability as well. See Stacy OSS Aff. ¶¶ 164, 175 (maintenance and repair); Stacy OSS Reply Aff. ¶ 70 (same); Scollard Aff. ¶ 10 (billing); Stacy OSS Aff. ¶ 183 (same).

Repeating stale allegations made in the last Louisiana section 271 proceeding, Cox complains that BellSouth has not corrected "deficiencies" in its provision of interim number portability. Cox at 3 & Ex. 1 at 9-12. Cox also argues that since these issues were not addressed in the Louisiana PSC's section 271 hearings, the Commission should not ascribe any weight to the Louisiana PSC's findings of compliance. Id. Ex. 1 at 10-11. The Louisiana PSC has judged, after careful deliberation and hearing of all concerned parties (and despite Cox's assertion to the contrary), that BellSouth's provision of interim number portability is nondiscriminatory and compliant with the requirements of the Act. Milner Aff. ¶¶ 149-160; 1997 Louisiana PSC at 17-18; 1998 Louisiana PSC at 3-4.

AT&T claims that BellSouth is hindering the efficient implementation of "subsequent partial migrations" for AT&T's Digital Link customers by "constantly chang[ing] the specifications and requirements for the ordering process." AT&T's Hassebrock Aff. ¶¶ 36-47. BellSouth can electronically administer "original" partial migration service requests via EDI, using the BellSouth telephone number in the LOCBAN field of the LSR (Stacy Affidavit, App. A, Tab 22, ¶ 33). Subsequent partial migrations are processed manually by the LCSC and will not be mechanized via EDI until national standards, established by the Telecommunications Industry Forum (TCIF) are approved and implemented. TCIF releases are coordinated by the Ordering and Billing Forum (OBF), which currently has the matter under review. Funderburg Reply Aff. ¶ 17.

AT&T also states that its Digital Link service is being disadvantaged by BellSouth's "unnecessary and non-cost-based" charges for porting via DID numbers in blocks of less than 20.

AT&T's Hassebrock Aff. ¶¶ 49-53. Once again, AT&T raises a pricing issue over which this Commission has no jurisdiction. AT&T also confuses DID service purchased by a customer directly from BellSouth with interim number portability of DID numbers. Varner Reply Aff. ¶¶ 47-48. When DID numbers are ported via interim number portability, BellSouth only charges the CLEC the applicable cost-based interim number portability charges. As a separate matter, when an end user customer purchases DID from BellSouth, the tariff charges apply, or the special assembly rates apply if the service is provided in less than 20-number blocks. Id.

AT&T also complains that BellSouth is impeding the implementation of Route Index-Portability Hub as a method of INP by arbitrarily changing the ordering intervals it requires from CLECs. AT&T at 61; AT&T's Bradbury Aff. ¶ 60; AT&T's Hassebrock Aff. ¶ 48. This is incorrect. There have only been two projects in Florida of the apparent magnitude alleged by AT&T, and to the best of BellSouth's knowledge, in neither project did BellSouth's Account Team for AT&T, or any other BellSouth employee propose any 30-day delay. Milner Reply Aff. ¶¶ 7-8. In both of these projects, BellSouth expedited its work and successfully met AT&T's deadlines. Id. The comments of e.spire regarding INP focus on difficulties with coordinated loop cut-overs in Louisiana that were similar to cut-over difficulties that have been resolved in Georgia. e.spire at 23-27. While it is true that BellSouth experienced some early difficulties with cut-overs, such as incorrect switch translations, this is not evidence of "serious operational flaws." As set out above in BellSouth's discussion of loops, a 1998 BellSouth study revealed an average time per loop cutover (that is, the time between when the loop is disconnected from the BellSouth switch to being connected to the CLEC's switch) of 4.1 minutes. This study also disclosed that once a loop has been connected to the CLEC's switch, it took the BellSouth switch an average of 39 seconds to respond to a request to begin porting calls incoming to BellSouth's

switch to the CLEC's switch. Milner Reply Aff. ¶ 35. This study should put to rest any lingering concerns this Commission has about BellSouth's ability to perform cutovers.

AT&T further criticizes BellSouth for not having established procedures for ceasing INP for disconnected AT&T Digital Link customers. AT&T's Hassebrock Aff. ¶¶ 54-55.

BellSouth's procedures for INP are not affected by whether the telephone number is working because it is the CLEC's switch, rather than BellSouth's switch, that terminates the call.

Furthermore, AT&T, rather than BellSouth, determines whether calls will continue to be ported to AT&T's switch, and simply places the appropriate INP order with BellSouth. Milner Reply Aff. ¶ 36.

e.spire's comments regarding INP focus on difficulties with coordinated loop cut-overs in Louisiana that were similar to cut-over difficulties that have been resolved in Georgia. e.spire at 23-27. e.spire attempts to characterize these incidents as evidence of "serious operational flaws." Id. at 23. It is true that BellSouth experienced some early difficulties with cut-overs, such as incorrect switch translations; however, these problems have been resolved.

MCI and Sprint fault BellSouth for allegedly shifting all incremental costs for interim number portability to CLECs. MCI at 83; MCI's Wood Aff. ¶¶ 20, 154-158; Sprint at 54-56. BellSouth's prices for interim number portability are based on the same principles and cost methodology used to determine all of BellSouth's UNE prices. Caldwell Reply Aff. ¶ 29. These principles and methodology were adopted by the Louisiana PSC and found to be in compliance with the Act. Id.

AT&T suggests that BellSouth is delaying joint testing of the ordering functionality of its Location Routing Number method of long-term number portability ("LNP") via EDI in the Atlanta MSA, thus potentially hampering permanent number portability in Louisiana when it

competitor resells a BellSouth service, the reseller is subject to the same terms and conditions as are specified in the applicable tariff. On the other hand, when a customer switches from a reseller to BellSouth or to another CLEC, the customer is simply leaving the reseller. BellSouth is not reselling any CLEC services. Accordingly, BellSouth will not pay any similar charges. BellSouth does, however, charge an end-user customer that returns to BellSouth the same subscriber change charge that it applies to the reseller when the customer initially switched its service. See Varner Reply Aff. ¶ 44.

TRA further accuses BellSouth of delaying in correcting service outages and completing repairs for CLECs' resale customers. TRA at 27. BellSouth does not intentionally delay repairs of resale services. See Funderburg Reply Aff. ¶ 52. WorldCom claims that a number of its resale customers are experiencing problems that did not occur when they were BellSouth's customers. WorldCom at 18-19; WorldCom's Rovang Aff., generally. These problems are directly related to the accuracy and completeness of information provided by the CLEC. BellSouth has trained its employees specifically in the area of complex service ordering, qualifying them to handle CLEC requests effectively and efficiently, but lack of accurate CLEC input still prolongs the ordering process. See Funderburg Reply Aff. ¶ 31.

ITC DeltaCom, CompTel and ALTS jointly complain that BellSouth has missed resale order due dates for which it has issued FOCs, resulting in the loss of CLEC customers to BellSouth. ALTS' Rozycki Aff. ¶ 15; CompTel's Rozycki Aff. ¶ 9. As an initial matter, the FOC target is forty-eight hours, not twenty-four hours as indicated in the commentors' complaints. The problem here is inaccurate or incomplete LSRs from the CLECs, which require clarification and inhibit BellSouth's ability to meet these FOC intervals.

BellSouth is providing nondiscriminatory access to its network. Stacy Performance Aff. Reply ¶ 6, 11-12.

In consultation with both the Georgia PSC and the Louisiana PSC, BellSouth has developed a comprehensive set of service quality measurements ("SQMs") covering, among other functions, pre-ordering, ordering, provisioning, maintenance/repair, billing for interconnection, operator services/directory assistance, trunk group performance, and collocation. These SQMs permit CLECs to compare BellSouth's performance to ensure that BellSouth provides these services in substantially the same time and manner to the CLEC as to its own retail service operations. Moreover, as William Stacy explained in his original affidavit discussing performance measures, BellSouth's SQMs are entirely consistent with this Commission's own proposed performance measurements and reporting requirements; in some cases, they are even more comprehensive. See Stacy Performance Aff. ¶ 5 & Exhibit WNS-2. For example, BellSouth's SQMs include many measurements for categories that are not included as part of this Commission's proposed measurements. See Stacy Performance Aff. WNS-2 (listing such categories as MaintenanceOSS Response Interval, MaintenanceOSS Interface Availability, Average Answer Time—Repair Centers, and Percentage of OS/DA Calls Answered Within "X" Seconds). The BellSouth SQMs currently in place in Louisiana thus accomplish what this Commission has identified as the purpose of performance measurements — to make "more transparent, or observable, the extent to which an incumbent LEC is providing nondiscriminatory access, because such requirements will permit direct comparisons between the

incumbent's performance in serving its own retail customers and its performance in providing service to competing carriers."¹⁹

CLECs criticize the disaggregation level of the measurements provided by BellSouth, even though BellSouth currently has contracts with over 470 CLECs and had posted 12,167 separate performance measurement files on its Web site as of July 15, 1998. Stacy Performance Reply Aff. ¶ 4. The amount of information generated by these measurements is tremendous, and often wholly unnecessary. For example, a representative CLEC in Louisiana, using the current SQM, received 111 pages of reports (36 pages of "raw data" and 75 pages of reports) for one month, of which only a small percentage of these materials addressed facilities and services actually used by the CLEC. Id.

To implement the additional disaggregation suggested by CLECs would require months of further work and millions of additional dollars. Id. The hardware and software to produce this information would have to be purchased and installed. Id. This work would take between 9 and 12 months to complete. Id. If some CLECs genuinely believe such additional reporting is necessary, they should incur the cost. Id.

Specifically, a number of commenters have criticized BellSouth's SQMs on the ground that they measure performance at the wrong geographic level. These commenters argue that measuring performance at a state or regional level may result in misleading comparisons, because CLECs "are likely to operate only in much more limited geographic market areas." AT&T's Pfau & Dailey Aff. ¶ 95; see also Sprint's Closz Aff. ¶¶ 36-39; DOJ at 34 n.69. But as

¹⁹ Notice of Proposed Rulemaking, Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance, FCC 98-72, CC Docket No. 98-56 (released Apr. 17, 1998) ("NPRM").

William Stacy explains in his Reply Affidavit addressing performance monitoring, state and regional measurements provide all the information regulators and new entrants require to confirm BellSouth's provision of nondiscriminatory access. See Stacy Performance Reply Aff. ¶ 4. BellSouth has no obligation to tailor its measurements to the unique and ever-changing business strategies of individual competitors. For instance, the fact that some CLECs currently choose to operate only at the level of the Metropolitan Statistical Area ("MSA"), see Hyperion at 7, is hardly a basis for requiring BellSouth to expend the enormous investment in time and resources that would be required to install the system hardware and software to produce this information. See Stacy Performance Reply Aff. ¶ 4. There are 64 MSAs in BellSouth's region, and this level of disaggregation would yield overwhelming information. Id.

Commenters also criticize BellSouth's measurements for failing to reflect sufficient product disaggregation. See, e.g., AT&T's Pfau & Dailey Aff. ¶ 97; Hyperion Comments at 8-9. But as Mr. Stacy explains, further disaggregation of this sort would be unnecessary as well as extraordinarily costly; such expenditures should not be compelled before reaching an industry-wide consensus on the products for which reporting is essential. See Stacy Performance Reply Aff. ¶ 6.

A number of commenters criticize BellSouth for not adopting performance benchmarks that provide a bright-line test for when impermissible discrimination has occurred. See, e.g., Sprint's Cloz Aff. ¶¶ 42-44; MCI at 30-35; DOJ at 38-40. There is no requirement in the Act that specific performance standards be adopted. Indeed, such fixed standards would be inappropriate as a test of compliance with the 1996 Act unless BellSouth's retail performance were equally set in stone. This Commission has explicitly decided that current data are insufficient to justify imposing performance standards at this point. See NPRM ¶ 17 (preferring

“to rely in the first instance on the industry standard-setting process and contractual arrangements between private parties”); *id.* ¶ 125 (deciding to postpone consideration of standards “until parties have had the opportunity to consider how they would be used and have been able to review actual performance data over a period of time”).

More particularly, some carriers have criticized BellSouth for not accepting a set of performance standards offered by the Local Competitive Users Group (“LCUG”). *See, e.g.,* MCI at 33. The LCUG is hardly an objective standards body; it is composed of five interexchange carriers claiming to be interested in providing local exchange service. It has proposed standards on services for which BellSouth has no analogous retail services; in the absence of any information, evidence, or data to support these standards, there is a serious concern that these standards have been set at levels that are biased in favor of the LCUG members and do not reflect individual incumbent LECs’ actual retail performance. Indeed, Sprint — one of the drafters of the LCUG standards — conceded in another Commission proceeding that the LCUG measures were never intended to serve as “a hard-and-fast rule or a performance standard applicable to all ILECs.”²⁰

BellSouth also is not required unilaterally to adopt a system of self-executing penalties and credits in order to enforce the statutory nondiscrimination requirement. *See, e.g.,* AT&T’s Pfau & Dailey Aff. ¶ 64; WorldCom at 30-31. Penalties and credits of this sort are nowhere required in the 1996 Act and they are, in any event, an issue for state-supervised negotiation. To the extent that individual CLECs believe such enforcement mechanisms are necessary, they are

²⁰ Comments of Sprint Corporation, Petition of LCI and Comptel for Expedited Rulemaking to Establish Reporting Requirements and Performance and Technical for Operations Support Systems, RM 9101, at 8 (FCC July 10, 1997) (Reply App., Tab 16).

free to contract for them under the supervision of the Louisiana PSC. See Stacy Performance Reply Aff. ¶¶ 13-14.

Criticisms regarding statistical methodologies for analyzing performance data are premised on the mistaken assumption that there is a consensus on the appropriate methodology to measure "parity." As this Commission implicitly recognized when it sought comment on various statistical methodologies, see NPRM Application App. B, there is no industry-wide consensus on the appropriate methodology with which to analyze performance data. See Stacy Performance Reply Aff. ¶ 16. For this reason, it is far more sensible for BellSouth to negotiate, on a case-by-case basis as part of the terms and conditions of an interconnection agreement, a methodology to be used for evaluating parity between BellSouth and a particular CLEC, which responds specifically to the concerns of that CLEC. In reviewing such agreements, the Louisiana PSC will ensure that they comply with the nondiscrimination requirements of section 251.

Various commenters purport to identify particular measurements that, in their view, demonstrate that BellSouth is failing to offer nondiscriminatory access to its network systems. See, e.g., Sprint's Closz Aff. ¶ 45; AT&T's Pfau & Dailey Aff. ¶¶ 65-87; DOJ at 28-35. Nondiscrimination simply cannot mean that BellSouth must provide equal or better performance to CLECs for every performance measurement; such a requirement would inevitably compel BellSouth to provide CLECs better performance overall than it provides to its own customers. This Commission has consistently recognized that parity means providing access and services "in substantially the same time and manner that an incumbent [provides] for itself." Local Interconnection Order, 11 FCC Rcd at 15764, ¶ 518; Michigan Order, 12 FCC Rcd at 20616, ¶ 135. The fact that some measurements reveal that BellSouth occasionally provides superior performance of some sort to its own customers than it is able to provide to CLECs does not mean

that BellSouth is providing inferior service to any CLEC, or with respect to any checklist item, overall. See Stacy Performance Reply Aff. ¶ 23. With the volume of data collected by BellSouth and the range of variables that account for particular fluctuations in results over time, variations in performance are inevitable; the important question is whether BellSouth is providing “substantially the same” service quality to CLECs as it provides to itself. BellSouth meets this standard, and this is all that the Act and this Commission’s orders require.

DOJ contends that BellSouth has failed to provide a “proper” average provisioning interval. DOJ at 32. Specifically, DOJ points out that BellSouth’s method of calculating average provisioning intervals “fails to exclude from the calculation those orders in which the customer requests a due date beyond the next available date.” Id. n.63. Accordingly, this measurement “is not a reliable indicator.” Id. BellSouth made this same point in its first Louisiana Application. BellSouth explained that its systems were not designed to “back out” all cases in which CLECs rejected the first available due date, and that therefore the average installation interval requested by the Commission could report spurious “discrimination” even if BellSouth were meeting requested due dates 100 percent of the time.²¹

Having pointed out this criticism itself, BellSouth complied with the Commission’s wishes and provided the interval. In its South Carolina Order, the Commission acknowledged that the length of the average installation interval provided for resale and retail orders “can be influenced” by (among other variables) “that the competing carrier’s customers may not choose to receive service on the first date available for service installation.” South Carolina Order, 13

²¹ Reply Brief in Support of Application by BellSouth for Provision of In-Region, InterLATA Services in Louisiana, CC Docket No. 97-231, at 62.

FCC 539, 614-15, ¶ 138. The Commission concluded that the Bell company applying for section 271 relief should nevertheless provide the information. Id.

DOJ's criticism of the average installation interval provided by BellSouth is thus unwarranted. BellSouth has provided the average installation interval requested by the Commission, yet now finds itself criticized by DOJ for doing so. DOJ's reasoning moreover, is the same one as why BellSouth did not supply the interval in its last application — it is inaccurate, and BellSouth's systems are not designed to determine the variable that is needed to render the interval accurate. Other measurements provided by BellSouth do provide the information that the Commission needs to ensure that installation work is being performed on a nondiscriminatory basis, however. See Stacy Performance Aff. Ex. WNS-1.

The Louisiana PSC has demonstrated its commitment to ensuring reasonable performance measurements by adopting the SQMs that had been formulated by the Georgia PSC. Beyond this, on August 19, 1998 the Louisiana PSC voted to order BellSouth to disaggregate its SQMs into nine additional provisioning and maintenance, as well as repair performance measurements. Stacy Performance Reply Aff. ¶ 6. In addition, the Louisiana PSC adopted its staff's recommendation that over the next six months it review and assess the performance data reported by BellSouth to determine if a greater or lesser degree of disaggregation is necessary. Id. While BellSouth does not believe this additional disaggregation is necessary, BellSouth has begun purchasing the needed additional hardware, as well as reprogramming the appropriate systems in order to capture the data required by the Louisiana PSC. Id.

While BellSouth does not agree with all the steps taken by the Louisiana PSC, those steps and the PSC's continuing review of BellSouth's performance measurements, certainly

should reassure the Commission the PSC has assumed appropriate responsibility in this area and will enforce the substantive requirements of the 1996 Act.

IV. BELLSOUTH SATISFIES THE REQUIREMENTS OF SECTION 272

BellSouth has done everything necessary to demonstrate it will provide interLATA services in Louisiana in compliance with the requirements of section 272. BellSouth Corporation has established a separate affiliate, BellSouth Long Distance, Inc. ("BSLD"), that will provide in-region interLATA services in compliance with the structural separation and operational requirements of section 272. Cochran Aff. ¶¶ 7-8; Wentworth Aff. ¶¶ 5-7. BellSouth has satisfied the structural and transaction requirements of section 272(b), and has established nondiscrimination safeguards pursuant to section 272(c). BellSouth will comply with the audit requirements of section 272(d), will fulfill requests in a nondiscriminatory fashion, pursuant to section 272(e), and will engage in joint marketing that is consistent with the Commission's South Carolina Order. BellSouth Br. at 66-70. Finally, BellSouth has implemented a compliance program to ensure that it satisfies the obligations of section 272. Betz Aff. ¶¶ 2-17.

AT&T, however, asserts that BellSouth and BSLD do not comply with the disclosure requirements of section 272. AT&T at 79-82. Of course, AT&T is only able to make specific criticisms of BellSouth's disclosure because BellSouth has provided such extensive information even prior to its entry into in-region, interLATA services, when the disclosure requirements of section 272 become applicable. The entirety of the relationship between BST and BSLD is posted on the Internet and in BST's publicly available tariffs. The agreements posted on the Internet and made available for public inspection contain the entire rates, terms, and conditions of those agreements. See Wentworth Aff. ¶ 14; Wentworth Reply Aff. ¶ 4.

While AT&T claims "[t]he posted agreements differ in significant respects from similar agreements made available for public review," AT&T at 82, the only difference between the agreements made available for public review and those posted on the Internet is that those available for public review contain an explanation of the FCC rules as to the definition of Fully Distributed Cost ("FDC"). Cochran Reply Aff. ¶ 9; see also Wentworth Reply Aff. ¶ 6 (posting of past transactions). BST's disclosure also describes those activities that BST will provide to BSLD and is willing to provide to interested non-affiliates on a nondiscriminatory basis after BellSouth receives section 271 approval. Cochran Reply Aff. ¶ 6.

AT&T complains that BST and BSLD have not disclosed any services, facilities, or information provided for BSLD by nonregulated affiliates. AT&T at 82. In its Application, BellSouth stated that BST had not transferred to any affiliate any network facilities that are required to be unbundled pursuant to section 251(c)(3). Cochran Aff. ¶ 11. BellSouth disclosed that BSLD has chosen to outsource certain accounting services to BellSouth Corporation, which is separate and independent from BST. Wentworth Aff. ¶ 11. In the event that BST provides BSLD with services, facilities, or information, they will be available to non-affiliates on the same rates, terms, and conditions. Cochran Reply Aff. ¶ 6.

AT&T also suggests, without offering any evidence, that BellSouth has improperly subsidized BSLD, and that BellSouth has failed to make "any systematic efforts" to correct these inappropriate actions. AT&T at 84. There is no basis for this assertion. As BellSouth stated in its Application, all transactions between BST and BSLD have been carried out on an arm's-length basis in accordance with the Commission's applicable transaction and cost-accounting rules. Wentworth Aff. ¶ 14.

AT&T contends that BellSouth and BSLD "have not presented evidence" of sufficient compliance programs. AT&T at 82. In its Application, BellSouth set out the compliance procedures that it has established as part of ensuring its compliance with section 272. Betz Aff. ¶¶ 2-17. These procedures are similar to those used to comply with judicial restrictions under the Modification of Final Judgment ("MFJ"), and are more than adequate to ensure that section 272's requirements are satisfied.

AT&T further contends that BellSouth has failed to establish that BST and BSLD have separate officers and directors under section 272(b)(3) – not because BST and BSLD do not structurally conform to these requirements, but because regardless of corporate structure, "as a practical matter" they do not report to their own separate and independent boards. AT&T at 84. Sprint also contends that BSLD's corporate structure is inadequate under section 272. Sprint at 61-63. These arguments are based on a distorted reading of the Commission's Michigan Order. Id. In that order, the Commission found that Ameritech's long distance affiliate was not in compliance with section 272(b)(3) because it did not maintain a separate board of directors. Michigan Order, 12 FCC Rcd at 20731 ¶ 361. As Sprint concedes, this is not the case with BSLD, which does have a separate director. Sprint at 63; see Cochran Reply Aff. ¶ 13. Whatever the case with Ameritech in Michigan, the structure adopted by BellSouth complies with section 272(b)(3). AT&T's "truly independent" standard, AT&T at 84, has no basis in corporate law, the 1996, or this Commission's orders.

MCI suggests that BellSouth is obligated under section 272 to disclose confidential personnel information regarding former BST employees who are currently employed by BSLD, as well as the "process" by which these employees were hired by BSLD. MCI at 68. MCI attempts to justify these intrusive demands by suggesting that BST may have "strategically